

In the Matter of Merchant Mariner's Document No. Z-735650-D2 and  
all other Seaman Documents

Issued to: ALBERT H. LOUDEN

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1072

ALBERT H. LOUDEN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 12 March 1958, an Examiner of the United States Coast Guard at Honolulu, Territory of Hawaii suspended Appellant's seaman documents upon finding him guilty of misconduct. Two specifications allege that while serving as chief pumpman on board the United States SS WANG CAVALIER under authority of the document above described, on or about 7 March 1958, Appellant assaulted and battered pumpman Charles V. Procell; on 5 and 6 March 1958, Appellant failed to stand his watches without reasonable cause.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, Appellant elected to waive that right and act as his own counsel. He entered a plea of not guilty to the charge and each specification.

The Investigating Officer made his opening statement. He then introduced in evidence the testimony of pumpman Procell and two other witnesses. The testimony of three witnesses which had been taken at Procell's hearing was stipulated in evidence. Appellant testified that he had not attacked Procell in his bunk.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then rendered the decision in which he concluded that the charge and two specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of three months outright and three months on twelve months' probation.

The decision was served on Appellant by mail on 22 March 1958.

Appeal was timely filed on 17 April and no supplementary brief has been received to date.

### FINDINGS OF FACT

From 14 December 1957 to 8 March 1958, Appellant was serving as chief pumpman on board the United States SS WANG CAVALIER and acting under authority of his Merchant Mariner's Document No. Z-735650-D2. From 5 to 8 March, the ship was in the port of Honolulu, Territory of Hawaii.

On the morning of 5 March, Appellant threatened to take his roommate, pumpman Charles V. Procell, out on deck and give him a beating. Procell walked away from Appellant but, later in the morning, Procell told Appellant that he would receive a beating if he did not return for his watch at 1600. Generally, Appellant was reputed to have a hot temper and to have made derogatory remarks about his roommate. On the other hand, one of the witnesses testified that Procell was a quiet fellow.

Prior to 1600 on 5 March, Appellant went ashore without permission. He did not return on board until between 0300 and 0330 on 7 March. As a result, Procell stood Appellant's 1600 to 2400 watch on 5 March and his 0800 to 1600 watch on 6 March. Appellant was logged and fined for missing these watches.

When Appellant returned on board, he asked if Procell was on the ship. The gangway watch told Appellant that Procell had been on board for about half an hour. The gangway watch then observed Appellant go aft along the starboard side toward his quarters on this side of the ship. The messroom was on the port side. Appellant had been drinking alcoholic beverages but he walked straight and did not appear to be drunk.

At this time, Procell was sound asleep in the upper bunk of the room he shared with Appellant. The lights were out and the room was dark. Procell was awakened suddenly when he was struck in the eye by Appellant who then went to the messroom where the Boatswain was. Procell jumped out of his bunk, put on his trousers and went to the messroom. He grabbed Appellant and was knocked down by him. Then Appellant was given a beating by Procell. He stopped after seeing that Appellant's face was bleeding. The Boatswain did not interfere. Appellant was hospitalized briefly with a broken hand, facial lacerations and bruises. Procell suffered a bruised eye and shoulder. Appellant is 58 years of age and Procell is 51. The latter weighted about 20 pounds more than Appellant.

Appellant has no prior record. He has been going to sea regularly for the past 14 years.

As a result of the incident in the messroom, Procell received a probationary suspension.

### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the evidence does not support the findings and decision. An eyewitness to the assault was not called to testify and Appellant was not fully aware of his right to call this witness. Appellant was at a U. S. Public Health Service Clinic on 5 March. The injuries allegedly sustained by Appellant in the fight were received on a preceding day.

Appearance on Appeal: Standard, Weisberg, Harolds and Malament of New York City by Malcolm B. Rosow, Esquire, of counsel.

### OPINION

Appellant's contentions on appeal are without merit. He was given every opportunity to produce witnesses in his behalf. There is no evidence in the record to support his claim that he was at a P.H.S. clinic on 5 March or that his injuries were not received in the fight with Procell.

It is my opinion that there is substantial evidence in the record to support the Examiner's findings and conclusions that the two specifications were proved.

Appellant does not seriously contest the evidence that he was absent from the ship without permission during the course of his watches on 5 and 6 March. The testimony shows that Procell stood Appellant's watches and that an entry was made in the Official Logbook finding Appellant for this offense.

Regarding the assault and battery on Procell, it is clear from the opinion section of the Examiner's decision that his ultimate finding, that Appellant was guilty as to this specification, was based on Procell's testimony that he was awakened when struck in the eye while asleep in his bunk, rather than on the evidence as to what happened after Procell entered the messroom. Although the Examiner made no specific findings concerning the credibility of the witnesses, as he should have done in this case, the implication of his finding that Appellant was guilty is that he accepted Procell's testimony that his eye was injured before he left his room. Accepting this conclusion of the Examiner since it is not clearly erroneous, it is reasonable to assume that Appellant was the one who struck the blow.

The circumstantial evidence against Appellant is strong although Procell frankly testified that "someone" - not Appellant

by name - struck him in the dark room. Appellant was known to have a quick temper. One witness said Appellant had tantrums - fits of ill temper. Appellant had threatened Procell before leaving the ship on 5 March and had directed abusive language toward Procell on other occasions. When Appellant returned to the ship on 7 March just prior to the assault, the gangway watch testified that Appellant asked whether Procell was on board and then headed directly toward their room. This witness indicated that if Appellant had intended to go to the messroom first, it would have been easier for him to enter the messroom by going along the port side of the ship because the messroom was on the port side. But Appellant went aft on the starboard side which was the side his and Procell's room was on. Also, it is assumed that few men on the ship were up at 0330.

The factors favorable to Appellant are that he has a long, previously unblemished record and the matters indicating his guilt are purely circumstantial. I do not think that these are adequate reasons to overthrow the findings and conclusions of the Examiner with respect to this specification alleging assault and battery.

#### ORDER

The order of the Examiner dated at Honolulu, Territory of Hawaii, on 12 March, 1958, is AFFIRMED.

A. C. Richmond  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D.C., this 23rd day of September, 1958.